STATE OF MICHIGAN

COURT OF APPEALS

In re DAVIS-CRAWFORD/JOHNSON, Minors.

UNPUBLISHED
May 19, 2015

No. 323397
Washtenaw Circuit Court
Family Division
LC Nos. 2012-000094-NA;
2012-000095-NA;
2013-000143-NA

Before: BOONSTRA, P.J., and SAAD and MURRAY, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated her parental rights to M1, M2, and S.J. under MCL 712A.19b(3)(g) and (j). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In September 2012, petitioner Department of Human Services (DHS) sought to remove the minor children from respondent's custody, because of respondent's: (1) failure to provide medical care and adequate supervision for her children; (2) substance abuse; (3) unsanitary and substandard living arrangements; (4) misuse of state funds intended to assist her children; (5) lack of stable employment and financial prospects. Thereafter, the trial court took jurisdiction over the children, and DHS prepared a treatment plan for respondent to help her regain custody of her children.[1]

Among other services, DHS offered respondent counseling and a treatment program to help her overcome her alcohol and drug abuse, provided bus passes to assist in transportation to her new job, and parenting sessions with her caseworker. DHS also made extensive efforts to accommodate respondent's schedule by changing numerous visitation times and occasionally providing rides to said visitations, and offering counseling sessions to her in her own home.

[1] While M1 and M2 were under the trial court's jurisdiction, and while respondent was receiving reunification services, respondent gave birth to a third child, S.J. DHS filed a petition to take custody of S.J. in August 2013, which the trial court granted after a hearing. The court took jurisdiction over S.J. at the termination hearing in July 2014.

However, respondent did not avail herself of the services offered to her—she stopped attending counseling sessions, frequently did not appear for court-ordered drug tests, and did not complete the program designed to combat her substance abuse—nor did she clean her residence or improve its conditions. She also demonstrated poor parenting skills at the visitation sessions, which were described as chaotic, often left the visitation sessions 15 to 20 minutes early, and did not contact DHS or the children for weeks and months at a time.

Accordingly, DHS sought to terminate respondent's parental rights to M1, M2, and S.J. in November and December 2013. The trial court conducted a termination hearing in July 2014, at which it heard testimony from respondent, and caseworkers and counselors who had worked with respondent and the children. Respondent also took a drug test the morning of the hearing, and tested positive for marijuana use. On July 31, 2014, the trial court issued a written opinion and order, in which it terminated respondent's parental rights under MCL 712A.19b(3)(g) (parent, without regard to intent, fails to provide proper care or custody) and (j) (reasonable likelihood that child will be harmed if returned to the parent's home). The court also ruled that termination of respondent's parental rights was in the best interests of the children, as the bond between them had "been destroyed by [respondent's] unwillingness to comply with or benefit from the services she has been provided."

On appeal, respondent argues that the trial court erred when it held that: (1) it had jurisdiction over S.J.; (2) DHS made a reasonable effort to reunify her with her children; (3) statutory grounds for termination existed under MCL 712A.19b(3)(g) and (j); and (4) termination of her parental rights was in the children's best interests.[2]

II. STANDARD OF REVIEW

A trial court's decision to exercise jurisdiction over a minor is reviewed for clear error,[3] as is the court's determination on whether DHS made reasonable efforts to preserve and reunify the family. *In re Fried*, 266 Mich App 535, 542–543; 702 NW2d 192 (2005). "We review for clear error both the [trial] court's decision that a [statutory] ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest under MCL 712A.19b(5)." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

III. ANALYSIS

[2] Respondent also makes the unavailing (and unpreserved) claim that the trial court, in her words, "abdicated its role as a neutral arbitrator" when it noted that respondent tested positive for marijuana use the morning of the hearing. In a termination hearing, a trial court is permitted to state findings of fact on the record. MCR 2.517. When it noted that respondent tested positive for marijuana use, the trial court stated a finding of fact. Doing so in no way rendered the trial court "biased" against respondent, and respondent's claims to the contrary are frivolous and without merit. See *In re MKK*, 286 Mich App 546, 566–567; 781 NW2d 132 (2009).

[3] *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

A. THE TRIAL COURT'S JURISDICTION OVER S.J.

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). "Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *Id*. To exercise jurisdiction over a child, the trial court must find that one of the grounds listed in MCL 712A.2(b) has been shown by a preponderance of the evidence. *In re BZ*, 264 Mich App at 295.

Here, respondent wrongly claims that the trial court erred when it assumed jurisdiction over S.J.[4] The trial court both assumed jurisdiction over S.J. and terminated respondent's parental rights to him in its July 31, 2014 opinion and order. In this opinion, the trial court specifically stated that it found statutory grounds to establish jurisdiction over S.J. in MCL 712A.2(b), which states:

> (b) [The trial court has] [j]urisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.
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> * * *
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> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Despite respondent's claims that her childcare abilities had improved when the trial court asserted jurisdiction over S.J. in July 2014, the record indicates otherwise. At the time the trial court took jurisdiction over S.J., respondent lived in a domicile that was unsuitable for children, had limited financial means, continued to struggle with basic parental duties, and persisted in abusing substances. The trial court therefore properly took jurisdiction over S.J. pursuant to MCL 712A.2(b), and respondent's argument to the contrary is without merit.

B. REUNIFICATION EFFORTS

"Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist." *In re Moss*, 301 Mich App 76, 90–91; 836 NW2d 182 (2013). However, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide

[4] Again, the trial court had already assumed jurisdiction over M1 and M2 in 2012.

services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Here, respondent unconvincingly claims that DHS did not make reasonable efforts to reunify her with her children. The record shows that DHS actually made extensive efforts to accommodate respondent's work and personal schedule in its provision of services to her. For instance, DHS assisted respondent with her transportation needs, conducted counseling sessions at respondent's home, provided her with a cell phone, and attempted to schedule its services and parenting time in conjunction with respondent's work. Despite DHS's efforts on her behalf, respondent's participation in these services was sporadic at best. See *In re Frey*, 297 Mich App at 248. Her claims that DHS did not make sufficient efforts to reunite her with her family are thus belied by the record and without merit.

C. STATUTORY GROUNDS FOR TERMINATION

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). MCL 712A.19b(3) reads, in pertinent part:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, the trial court properly held that clear and convincing evidence supported termination of respondent's parental rights to the children under both MCL 712A.19b(3)(g) and (j). Again, DHS initially sought to remove M1 and M2 from respondent's care because of respondent's: (1) failure to provide medical care and adequate supervision for her children; (2) substance abuse; (3) unsanitary and substandard living arrangements; (4) misuse of state funds intended to assist her children; (5) lack of stable employment and financial prospects. During the length of these proceedings, respondent failed to participate in or benefit from services offered to her to help her overcome these issues. She also continued to abuse substances, and live in conditions that were unsuitable for children. Based on respondent's failure to change her behavior, the trial court properly found that: (1) respondent failed "to provide proper care or custody" for the children, and that there was no "reasonable expectation" that respondent would

do so in the future; and (2) there was a "reasonable likelihood" that the children would be harmed if they were returned to respondent's household. MCL 712A.19b(3)(g) and (j).[5]

D. BEST INTERESTS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App at 40. The trial court's determination that termination is in the children's best interests must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. When it determines whether termination is in the children's best interests, the court may consider such factors as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41–42 (citations omitted). The court may also look to the likelihood that "the child could be returned to her [parent's] home within the foreseeable future, if at all[,]" and the respondent's general compliance with the case service plan. *In re Frey*, 297 Mich App at 248–249.

Here, the trial court properly held that termination was in the best interests of the children. As noted, respondent exhibited little interest in the well being of her children during parenting time, often leaving sessions early. She also exhibited poor parenting abilities during those sessions, and had difficulty coping with the children if they were agitated or upset. And, her continued substance abuse and unsuitable home environment does not serve the children's "need for permanency, stability, and finality." *In re Olive/Metts*, 297 Mich App at 41–42.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Christopher M. Murray

[5] Respondent's assertion that the termination of her parental rights to S.J. was based on impermissible hearsay is unsupported and without merit. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). In any event, the specific statements she claims are hearsay—essentially, the entirety of the testimony provided by the caseworkers who attempted to assist her in regaining custody of her children—are not hearsay.